

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

CASE NO. 3:07-CR-387

v.

(JUDGE CAPUTO)

DARRELL GIST,

Defendant.

**MEMORANDUM**

Darrell Gist was convicted of assault by striking, beating or wounding, possession of a prohibited object and knowingly making a false, fraudulent and fictitious statement on June 2, 2009. He has filed a Motion to Set Aside the Charges Due to Ineffective Assistances (sic) of Counsel, Unethical Conduct and Sixth [6] and Fourteenth [14] Amendment Constitutional Rights Violation. (Doc. 93.) Mr. Gist was convicted based, in large measure, on a video of the occurrence of the offense. The video clearly shows Mr. Gist dropping a shiv immediately before he began to punch Mr. Amaya, who was standing at a urinal with his back to Mr. Gist. Mr. Gist continued to punch Mr. Amaya and when Mr. Amaya fell to the floor in the room adjoining the bathroom, Mr. Gist kicked Mr. Amaya several times. Mr. Gist then grabbed his back, limped back into the bathroom and fell on the floor. When Corrections Officers arrived, he said he had been stabbed, whereupon he was taken to the hospital. It was determined he had three superficial puncture wounds on his back that required no treatment. He was returned to the prison.

Mr. Gist seeks to blame his lawyer for his plight. Unfortunately, his lawyer did not appear in the video, but Mr. Gist did. While there was some effort to conceal what occurred in the bathroom (someone turned out the lights just prior to Mr. Gist's initiation of his attack on Mr. Amaya), the camera still clearly displayed the dropping of the shiv by Mr. Gist and his attack on Mr. Amaya.

It is true that Mr. Gist's clothing was apparently destroyed, and Mr. Amaya was removed from the country. Neither of these developments prejudiced Mr. Gist, given the video evidence. Moreover, counsel had no control over either of these events.

As far as counsel's performance is concerned, Mr. Bartolai got the most out of the case he had to defend. A picture is worth a thousand words, and any lawyer confronted with what was shown on the video would be at a severe disadvantage. Yet, Mr. Bartolai conducted skillful cross-examinations of the witnesses who, for the most part, were on the video. Mr. Gist's conduct displayed on the video was not something to overcome easily, if at all.

There is simply no basis for the Motion, and it will be dismissed.

Date: July 1, 2009

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge

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**ORDER**

**NOW**, this 1<sup>st</sup> day of July, 2009, for the reasons set forth in the foregoing Memorandum, **IT IS HEREBY ORDERED** that Defendant's Motion to Set Aside the Charges Due to Ineffective Assistances (sic) of Counsel, Unethical Conduct and Sixth [6] and Fourteenth [14] Amendment Constitutional Rights Violation (Doc. 93.) is **DISMISSED**.

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge